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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

KRBL Limited,

Plaintiff,

v.

Overseas Food Distribution, LLC

Defendant.

Case No.

VERIFIED COMPLAINT¹

¹ The factual allegations of this pleading are verified in relevant part by the Declaration of Ms. Priyanka Mittal, filed contemporaneously herewith (“Mittal Dec”).

1 Plaintiff KRBL Limited (“KRBL”), by its attorneys, brings its complaint
2 against Defendant Overseas Food Distribution, LLC (“OFD”) as follows:

3 **PARTIES**

4 1. Plaintiff KRBL is an Indian company with its principal place of
5 business at 5190, Lahori Gate, Delhi 110006, India.

6 2. Defendant OFD is a California corporation with its registered office at
7 6095 Malburg Way, Vernon, CA 90058.
8

9 **JURISDICTION AND VENUE**

10 3. The causes of action alleged herein arise under federal statutes
11 regarding copyrights and trademarks, *i.e.*, 17 U.S.C. §§101 *et seq.* (the Copyright
12 Act) and 15 U.S.C. §§1051 *et seq.* (the Lanham Act), so this Court has subject matter
13 jurisdiction under 28 U.S.C. §§1331 and 1338.
14

15 4. This Court has an independent basis for jurisdiction over all the claims
16 herein in accordance with 28 U.S.C. §1332 because there is diversity of citizenship
17 between the parties and the amount in controversy exceeds \$75,000.
18

19 5. Personal jurisdiction and venue are proper in this Court pursuant to 28
20 U.S.C. §§1391 and 1400.
21

22 **BACKGROUND ALLEGATIONS**

23 **KRBL is the World’s Largest Basmati Rice Exporter**

24 6. KRBL Limited (“KRBL”) was founded in 1889 by two enterprising
25 brothers, Khushi Ram and Behari Lal. At the time of its establishment, KRBL (then
26

1 known as known as Khushi Ram Behari Lal) owned, among other things, cotton
2 spinning mills and rice mills. In 1947, the company relocated its headquarters to
3 Delhi. In the early 1970s, KRBL restructured its business to focus on rice. Mittal Dec.
4 ¶4.
5

6 7. KRBL started exporting basmati rice in 1978, and is a pioneer of
7 packaged rice for the international community. KRBL has been awarded the
8 prestigious Agricultural and Processed Foods Expert Authority (“AEPDA”) trophy
9 14 times since the inception of the award. KRBL is now the world’s largest branded
10 basmati rice exporter, exporting rice to countries all over the world, including the
11 United States. Mittal Dec. ¶5.
12
13

14 8. KRBL has spent over three generations perfecting the basmati grain,
15 and it has cultivated relationships with basmati rice farmers for generations. KRBL
16 respects the farmers’ awareness of traditional knowledge and skills, experience in
17 modern-day crop management practices, commitment to excellence and access to top
18 grade inputs in order to get a top-quality basmati rice harvest. Mittal Dec. ¶6.
19
20

21 **KRBL’s India Gate Classic Is the**
22 **World’s Highest Quality Basmati Rice**

23 9. Basmati rice is aged and is known for its flavor and aroma while
24 cooking. It is grown only once per year, in the Indo-Gangetic Plain beneath the
25 Himalayan sub ranges. Like fine wine, basmati is aged for full-bodied flavor. India
26

1 Gate Classic is aged for a minimum of two years. The flavor and taste of India Gate
2 Classic are also superior to that of its competitors because of the quality of the rice
3 seed, the processes used to grow and mill the rice, and the selection during the
4 specialized milling process of only the best long grain rice for use. Because of the
5 care taken in the entire process, India Gate Classic has become the gold standard in
6 the industry. Mittal Dec. ¶7.
7
8

9 10. KRBL has discerned a sense of nostalgia among many rice consumers,
10 and especially among persons of Indian descent, for the traditional knowledge of rice
11 production and traditional aroma and flavor of high-quality basmati rice. India Gate
12 Classic is particularly popular among the Indian diaspora in countries around the
13 world, including in the United States, for its longstanding quality. Mittal Dec. ¶8.
14
15

16 **India Gate Classic Is a Popular,**
17 **Well-Known Brand in the United States**

18 11. KRBL has continuously sold India Gate Classic in the United States
19 since approximately August 2005. Mittal Dec. ¶9.
20

21 12. Sales of India Gate Classic in the United States have increased
22 approximately threefold, if not more, between 2005 and 2015. It is distributed in
23 stores across the United States, including in this judicial district, as well as through
24 online retailers such as Amazon and Walmart. Mittal Dec. ¶9.
25

26 **KRBL's India Gate Classic Packaging is Well-Known,**

Copyrighted, and a Distinctive Trade Dress

13. The design KRBL uses on its India Gate Classic packaging in the United States (the “India Gate Classic Packaging”) was designed to evoke the sense of nostalgia among many rice consumers, especially among persons of Indian descent, for the traditional knowledge of rice production. Mittal Dec. ¶10.

14. By virtue of its widespread and continuous use of the India Gate Classic Packaging in United States commerce since 2005, KRBL also owns common law trade dress rights in the India Gate Classic Packaging under various laws, including the Lanham Act and the statutory and common law of Michigan and California, among other jurisdictions.

15. Specifically, KRBL’s trade dress consists of its copyrighted packaging, which is distinctive and non-functional, featuring:

- (a) the colors brownish maroon, and various shades of cream, beige and brown;
- (b) a brownish maroon border with decorative gold designs;
- (c) an antique ink drawing in sepia tones depicting an Indian architectural landmark, the dominant element of which is an archway;
- (d) the “India Gate” brand name displayed in brown and white is superimposed over the upper middle portion of the image;

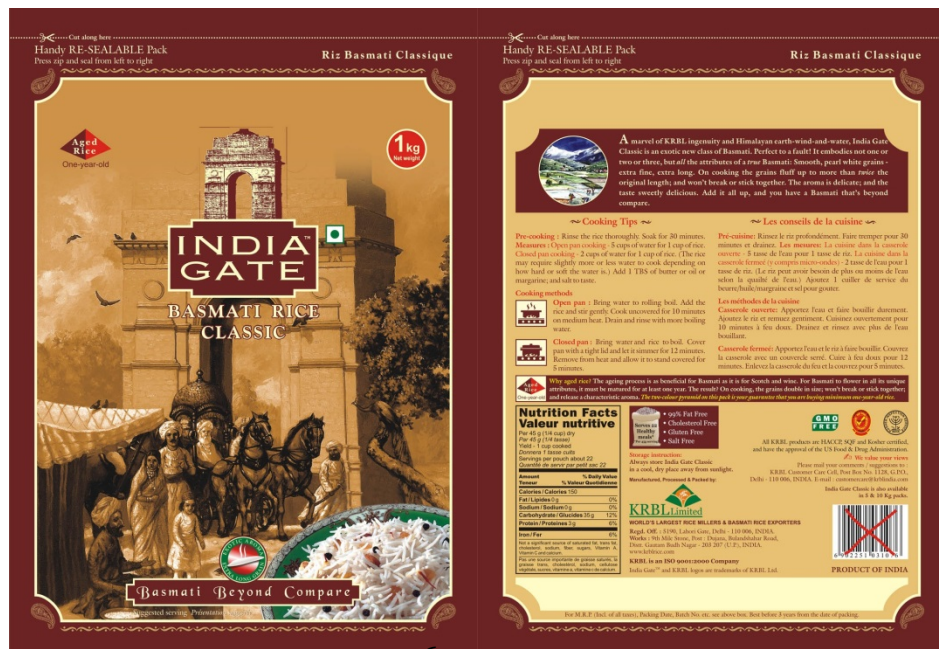
(e) the words “BASMATI RICE CLASSIC” in white lettering with brown outline for each letter;

(f) a color photograph of a plate of rice superimposed over the bottom right-hand corner of the picture of the architectural landmark;

(g) a prominent circular design featuring the colors green and red and descriptive information about the product (*e.g.*, “Exotic Aroma”, “Extra Long Grain”) along with a drawing of a steaming rice grain; and

(h) the back of the packaging featuring distinctive and original open- and closed-pan cooking instructions and graphics (together, (a)-(h) are called the “Trade Dress”).

16. In addition to owning similar copyright and trademark registrations and applications in nearly 50 countries, KRBL owns U.S. Copyright Registration No. VA0001690464, titled “India Gate Basmati Rice Classic,” for the following depiction of the India Gate Classic Packaging (*see* Mittal Dec. Ex. ¶10):



1 17. Also, the phrase INDIA GATE BASMATI RICE CLASSIC and the
 2 often-used shorthand INDIA GATE CLASSIC (together, the “CLASSIC Mark”)
 3 have become KRBL’s valuable common law trademarks across the United States in
 4 connection with the sale of rice.² Mittal Dec. ¶13.

6 18. KRBL has built significant goodwill and secondary meaning in its
 7 CLASSIC Mark and Trade Dress in the United States. KRBL has undertaken
 8 significant promotional efforts in the United States, as well as around the world, to
 9 establish the CLASSIC Mark and Trade Dress as indicators of source for its flagship
 10 basmati rice brand. Mittal Dec. ¶15.

13 19. India Gate Classic is known as “the top-tier, highest quality brand in
 14 the India Gate line and, indeed, throughout the entire world. If a customer wants the
 15 best basmati rice, they will ask for ‘India Gate Classic,’ or simply ‘Classic.’”
 16 Declaration of Ali Mehdi (filed contemporaneously herewith) at ¶3 (“Mehdi
 17 Declaration”)
 18
 19

20
 21 ² Separately, KRBL owns U.S. Trademark Registration No. 3,168,607 for the
 22 following composite mark that appears on all INDIA GATE-branded rice products:



1 20. KRBL extensively advertises India Gate Classic rice on Indian
2 television channels, including Udaya TV, Sun TV, Zee Cinema, IBN-7, NDTV
3 Imagine, Star Plus, Zee TV, and other channels. These advertisements reach
4 audiences in the United States through the internet. These ads are also available
5 through cable TV packages that include these Indian television networks, on
6 YouTube, and through display in Indian grocery stores. All of these advertisements
7 prominently display the CLASSIC Mark and Trade Dress. Mittal Dec. ¶16.

10 21. KRBL also advertises through United States-based television channels,
11 and it distributes posters and print advertisements that prominently display the
12 CLASSIC Mark and Trade Dress. Mittal Dec. ¶17. Some examples include:





22. KRBL also reaches customers in the United States and internationally through its social media channels, including the India Gate Rice Facebook page, which currently has over 78,000 likes. Mittal Dec. ¶17.

23. KRBL also uses poster and print advertising that prominently features the India Gate Classic Packaging and the CLASSIC Mark. Mittal Dec. ¶17.

24. KRBL regularly sends representatives to many of the largest regional food conventions to promote India Gate Classic, including the National Products Expo West in California, the Fancy Food Expo in New York, and the Mexican Exhibition. Mittal Dec. ¶18.

**The Infringing Mark and Infringing Packaging
Are Deceptively and Substantially Similar to
KRBL's Copyright, CLASSIC Mark, and Trade Dress**

1 25. One of the brands of basmati rice that competes with India Gate Classic
2 is sold under the brand name “India Salaam Classic” (the “Infringing Mark”).³ This
3 brand of rice is manufactured by the Indian company PK Overseas Ltd., and is
4 distributed in California and in an unknown number of surrounding areas by
5 Defendant OFD. Mittal Dec. ¶19.
6

7 26. KRBL’s competitors have not been able to match the distinctive quality
8 of India Gate Classic and the confidential processes KRBL uses to produce that rice.
9 Perhaps for this reason, the packaging of India Salaam Classic has been intentionally
10 designed to mimic KRBL’s CLASSIC Mark and Trade Dress. Mittal Dec. ¶19.
11
12

13 27. In late 2015, KRBL discovered that OFD was distributing India Salaam
14 Classic-branded rice in the following packaging (the “Infringing Packaging”) in
15 California and surrounding states:
16
17
18
19
20
21
22
23

24 ³ This brand sometimes also spells the word “Salaam” as “Salam.” Moreover, like the
25 India Gate Classic Packaging, India Salaam’s packaging uses the word “Pure Basmati
26 Rice” between the words “India Salaam” and “Classic.” For simplicity, KRBL will
refer herein to these variations collectively as the “Infringing Mark.”



Mittal Dec. ¶19.

28. A side-by-side comparison of the India Gate Classic Packaging and the Infringing Packaging makes obvious that the Infringing Packaging was designed to mimic, and thus to benefit from the goodwill inherent in, KRBL's Classic Mark and Trade Dress:



Mittal Dec. ¶20.

1
2 29. This is not the only example of the Infringing Mark and Infringing
3 Packaging causing confusion with India Gate Classic. India Gate Classic is sold all
4 over the world, and India Salaam Classic, packaged in the Infringing Packaging at
5 issue here, has followed into many of those markets. KRBL has already been
6 successful in having the Infringing Packaging removed from some of those markets.
7
8 Mittal Dec. ¶21.
9

10 30. For example, KRBL has filed a lawsuit that is currently pending in
11 Canada in order to stop the distribution and sale of India Salaam Classic rice using
12 the Infringing Packaging. Although that litigation and related negotiations are still
13 ongoing, the Canadian defendants have indicated a willingness to redesign the
14 Infringing Packaging. Mittal Dec. ¶22 & Exhibit F.
15
16

17 31. The Infringing Packaging was also recently removed from the
18 Singaporean market by Mohamed Mustafa & Samsuddin Co PTE Ltd., a distributor
19 that had been distributing both brands in Singapore. In a signed and sealed
20 undertaking dated January 22, 2016, the company wrote:
21

22 That upon comparison of the [sic] both the packing's i.e. 'India Gate
23 Basmati Rice Classic' and 'India Salaam Basmati Rice,' we found that
24 the packing, Trade dress, design, color scheme, color combination of
25 'India Salaam Basmati rice' is deceptively and confusingly similar to the
26 KRBL's well known products 'India Gate Basmati Rice Classic' and its
Trade dress, design, color scheme, color combination. The Packaging of
India Salam/Salaam appears to be a deliberate attempt to imitate the

1 overall appearance of KRBL's India Gate Basmati Rice classic
 2 packaging. . . . That Packaging of India Salam/Salaam leading the
 3 confusion in the mind of consumers and is likely to mislead the public to
 4 believe that the India Salaam Basmati rice originate with or are
 otherwise licensed by KRBL Limited, which is not the case.

5 We are withdrawing 'India Salaam Basmati Rice' from our shelves and
 6 stores with immediate effects and in future we shall not import India
 7 Salaam Basmati. We are destroying all materials including stationary,
 8 packing material, badges, cloth printed labels, books, publications,
 articles, advertisements or any other incrementing materials bearing the
 package of India Salaam Basmati Rice.

9
 10 Mittal Dec. ¶22 & Ex. G.

11 **KRBL Is Being Harmed by OFD's**
 12 **Infringing Mark and Infringing Packaging**

13 32. Distributors of India Salaam Classic have misled their customers into
 14 believing that India Salaam Classic is an offshoot or sister brand to India Gate
 15 Classic. After seeing the Infringing Packaging, people have believed this and bought
 16 India Salaam Classic, only to be disappointed by the lesser quality that they then
 17 incorrectly attribute to India Gate Classic. Mittal Dec. ¶23.

18
 19 33. KRBL has received complaints from distributors and consumers all
 20 over the world about the quality of India Salaam Classic that it does not make, which
 21 is powerful evidence of actual confusion. Mittal Dec. ¶24; Mehdi Dec. ¶¶14, 21 &
 22 Ex. A.
 23
 24
 25
 26

1 34. For example, Canadian customer “Vinita” complained that “I have
2 been a devoted customer of yours for years, but I was greatly upset with the last India
3 Salam Basmati Rice that I purchased [I]t hasn’t the same quality [as] India gate, it
4 has damaged rice. ... Please clean up your act soon or I will be forced to move on.”)
5 Customer Baldish Bahra complained he “will not stand for spending my hard-earned
6 money on an item, only to have it not only be bad quality, but not even be the same
7 item that I thought I was purchasing”). Mehdi Dec. Ex. A.
8
9

10 35. KRBL’s Midwest dealer has reported that several of his customers
11 have become confused between India Gate Classic and India Salaam Classic, and that
12 this is hurting his sales. Contemporaneously with this lawsuit, KRBL has taken action
13 against identical infringement in the Eastern District of Michigan. Mittal Dec. ¶21;
14 Mehdi Dec. ¶12.
15
16

17 36. KRBL has recently received multiple complaints from its California-
18 based distributor about the confusion being caused by OFD’s introduction of India
19 Salaam Classic into the West Coast market, and the impact that confusion is having
20 on his ability to sell India Gate Classic. Mittal Dec. ¶28.
21

22 37. These examples are persuasive evidence that the Infringing Packaging
23 is causing customer confusion amongst KRBL’s customers in jurisdictions around the
24 world, including in the United States and in this judicial district.
25
26

1 38. KRBL reasonably fears that this impression will quickly destroy India
2 Gate Classic's reputation for quality and deplete the goodwill that KRBL has
3 cultivated over the past decade. Mittal Dec. ¶26.
4

5 39. As a result of OFD's distribution of the Infringing Packaging, KRBL
6 has and continues to suffer serious economic injury. Mittal Dec. ¶26.
7

8 40. KRBL is informed that OFD has intentionally contributed to the
9 confusion between the two brands by intentionally misleading customers into
10 believing that India Salaam Classic and India Gate Classic are the same product.
11 Mittal Dec. ¶23.
12

13 41. KRBL has been, and is being, damaged by OFD's infringement as
14 alleged herein, at least in part in ways that cannot be adequately measured or fully
15 remedied by monetary damages.
16

17 **OFD Has Refused To Cease its Infringement**
18

19 42. OFD used to import and distribute KRBL's India Gate Classic rice.
20 After the OFD failed to make payments, KRBL terminated OFD's distributorship,
21 and filed a collection action against OFD. OFD is very well aware of the goodwill
22 and market value of India Gate Classic, and it decided to distribute the deceptively
23 similar India Salaam rice to improperly capitalize upon that goodwill. OFD knows
24
25
26

1 exactly which customers to target to cause the maximum amount of disruption to
2 KRBL's business. Mittal Dec. ¶27.

3
4 43. On December 3, 2015, KRBL sent a cease and desist letter to OFD
5 explaining that the Infringing Packaging is "confusing similar, and in many ways
6 nearly identical" to KRBL's India Gate Classic Packaging. KRBL never received a
7 response to that letter. Mittal Dec. ¶29.

8
9 44. Therefore, KRBL is constrained to resort to this legal action in order to
10 protect its valuable rights in the CLASSIC Mark and Trade Dress.

11 **COUNT I – COPYRIGHT INFRINGEMENT**

12
13 45. KRBL repeats and re-alleges herein each of the foregoing paragraphs.

14 46. Under the Copyright Act, as the copyright owner, KRBL has the
15 exclusive rights to reproduce its copyrighted India Gate Classic Packaging, to prepare
16 derivative works based upon the India Gate Design, to display the India Gate Classic
17 Packaging, to distribute copies of the India Gate Classic Packaging to the public, and
18 to import copies of same, for the duration of the copyright.
19
20

21 47. OFD's actions as described herein constitute reproduction, distribution,
22 display, importation, and/or performance of the India Gate Classic Packaging without
23 license or authorization, and therefore constitutes copyright infringement in violation
24 of 17 U.S.C. §101 *et seq.*
25
26

1 48. OFD is also liable under a theory of contributory, vicarious, and/or
 2 induced infringement for all infringements of the India Gate Classic Packaging by
 3 third parties who obtained the image from OFD.
 4

5 49. OFD's actions as alleged herein have been intentional and willful.

6 50. KRBL has been, and is being, damaged by this infringement.
 7

8 **COUNT II – TRADE DRESS INFRINGEMENT, TRADEMARK**
 9 **INFRINGEMENT, AND UNFAIR COMPETITION**

10 51. KRBL repeats and re-alleges herein each of the foregoing paragraphs.

11 52. By virtue of long and continuous use of the Trade Dress and CLASSIC
 12 Mark in commerce in the United States, KRBL has gained trade dress rights in the
 13 Trade Dress and trademark rights in the CLASSIC Mark under Section 43(a) of the
 14 Lanham Act (15 U.S.C. §1125(a)) and the laws of various jurisdictions, including
 15 California.
 16

17 53. The Trade Dress and CLASSIC Mark are inherently distinctive, and/or
 18 have gained secondary meaning among retailers and purchasers of rice in the United
 19 States, such that the Trade Dress and CLASSIC Mark have become strong marks and
 20 indicators of source.
 21

22 54. The Trade Dress is not functional, but is purely ornamental.

23 55. OFD distributes India Salaam Classic in the Infringing Packaging to
 24 substantially the same target market to which KRBL sells India Gate Classic.
 25
 26

1 56. OFD advertises India Salaam Classic basmati rice bearing the
2 Infringing Packaging through substantially identical marketing channels as KRBL
3 uses to advertise India Gate Classic rice.
4

5 57. The Infringing Packaging is highly and confusingly similar in
6 appearance to the Trade Dress, and its distribution has already led to actual
7 confusion.
8

9 58. The Infringing Mark is also confusingly similar to the CLASSIC Mark.

10 59. The similarities between the Infringing Mark and Infringing Packaging
11 and the India Gate Classic Mark and Trade Dress are intentional.
12

13 60. OFD's actions as described herein were done willfully and in bad faith.

14 61. By importing, selling, and marketing the Infringing Packaging and the
15 Infringing Mark, OFD has caused a likelihood of confusion in the marketplace
16 between the Infringing Mark and Infringing Packaging, and between the Infringing
17 Packaging and the Trade Dress.
18

19 62. KRBL has been damaged and subject to irreparable harm because of
20 OFD's actions.
21

22 **COUNT III – TORTIOUS INTERFERENCE WITH CONTRACT**
23

24 63. KRBL repeats and re-alleges herein each of the foregoing paragraphs.
25
26

1 64. KRBL had a contract with one or more retail businesses that carried
2 India Gate Classic at the time of the interference alleged herein.

3 65. KRBL had a contract with Aramco Imports Inc. (“Aramco”) to sell and
4 distribute India Gate Classic at the time of the interference alleged herein.

5 66. OFD had knowledge of the existence of these contracts between KRBL
6 and retailers carrying India Gate Classic, and between KRBL and Aramco.
7

8 67. OFD intentionally interfered with one or more of these contracts by,
9 among other things, passing off India Salaam Classic as being the same as, or a
10 related brand of, India Gate Classic, and by selling these retailers packages of India
11 Salaam Classic designed in a manner that caused foreseeable customer confusion
12 between the two different brands.
13

14 68. OFD’s actions described herein were wrongful *per se*, as there is no
15 justification under law or ethics for intentionally misleading customers concerning
16 the source, nature, or origin of a product.
17

18 69. OFD’s actions described herein were done willfully and in bad faith.
19

20 70. OFD’s actions described herein were intended to, and actually did,
21 cause interference in one or more of KRBL’s existing contracts, such that KRBL’s
22 sales of India Gate Classic were diminished, its relationships with one or more
23
24
25
26

1 customers were lost, and Aramco was induced to breach its contractual obligations to
2 KRBL.

3 71. KRBL has been damaged as a result of OFD's actions as described
4
5 herein.

6 **COUNT IV – TORTIOUS INTERFERENCE WITH BUSINESS**
7 **EXPECTANCY**

8 72. KRBL repeats and re-alleges herein each of the foregoing paragraphs.

9 73. KRBL had a business relationship or expectancy with one or more
10
11 retail businesses that carried India Gate Classic at the time of the interference alleged
12 herein.

13 74. These business relationships had a reasonable likelihood of future
14
15 economic benefit for KRBL.

16 75. OFD knew of these business relationships or expectancies at the time
17
18 of its interference.

19 76. OFD intentionally interfered with one or more of these relationships or
20
21 expectancies by, among other things, passing off India Salaam Classic as being the
22
23 same as, or a related brand of, India Gate Classic, and by selling these retailers
24
25 packages of India Salaam Classic designed in a manner that caused foreseeable
26
customer confusion between the two different brands.

1 77. OFD's actions described herein were wrongful *per se*, as there is no
2 justification under law or ethics for intentionally misleading customers concerning
3 the source, nature, or origin of a product.
4

5 78. OFD's wrongful intent is further corroborated by its acts of misleading
6 customers concerning the source, nature, or origin of India Salaam Classic.
7

8 79. OFD's actions described herein were done willfully and in bad faith.
9

10 80. OFD's actions described herein were intended to, and actually did,
11 cause interference in one or more of KRBL's existing relationships or expectancies,
12 such that KRBL's sales of India Gate Classic were diminished, and its relationships
13 with one or more customers were lost, and the amount of India Gate Classic rice it
14 was able to sell to and/or through Vic Soulahian was reduced..
15

16 81. KRBL has been damaged as a result of OFD's actions as described
17 herein.
18

19 **RELIEF REQUESTED**

20 Accordingly, KRBL prays that this Court enter a judgment in its favor and
21 against OFD as follows:
22

23 1) temporary and permanent injunctions to prevent or restrain further
24 importation, sale, or distribution of the Infringing Packaging and the Infringing Mark
25 under 15 U.S.C. §1116, 17 U.S.C. §502 and other applicable laws;
26

1 2) court orders impounding (a) all tangible examples of the Infringing
2 Packaging and the Infringing Mark and (b) all plates, molds, matrices, masters, tapes,
3 film negatives, or other articles by means of which such Infringing Packaging or the
4 Infringing Mark may be reproduced under 15 U.S.C. §1116, 17 U.S.C. §503 and
5 other applicable laws;
6

7 3) as part of any final judgment or decree, a court order mandating
8 destruction of the Infringing Packaging and the Infringing Mark under 15 U.S.C.
9 §1118, 17 U.S.C. §503 and other applicable laws;
10

11 4) disgorgement of Defendant's profits received in connection with the
12 importation, distribution, and sale of products bearing the Infringing Packaging or the
13 Infringing Mark including enhanced damages, all as provided under 15 U.S.C. §1117,
14 17 U.S.C. §504 and other applicable laws, or statutory damages of \$150,000 per
15 infringement under 17 U.S.C. §505;
16

17 5) KRBL's full costs in any enforcement action, as well as attorney's fees
18 under 15 U.S.C. §1117, 17 U.S.C. §505 and other applicable laws;
19

20 6) an award of damages according to the proofs for any amount not fully
21 compensated by the items of relief requested above; and
22

23 7) all other relief that the Court may deem just and warranted.
24
25
26

1 Respectfully submitted,

2 /S/_____
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